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10/633,046	08/01/2003	Thomas J. Wheeler	OLYM/0093	4714

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EXAMINER

SALDANO, LISA M

ART UNIT PAPER NUMBER

3673

DATE MAILED: 07/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/633,046

Applicant(s)

WHEELER ET AL.

Examiner

Lisa M. Saldano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 14-23, 25-29 and 31-38 is/are rejected.
- 7) ☒ Claim(s) 11-13, 24 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/14/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION*****Drawings***

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the “over-center” cams or cams as described in page 7 paragraph [0020] of the specification. The specification also fails to show the roller thrust bearing as described in page 9, paragraph [0022]. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "roller thrust bearing" of claim 13 and the cam system of claim 38 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to because Fig.8 contains a reference to the lower member using element number 56, but the arrow from the element number appears to be pointing to the upper member instead of the lower member. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing

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sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

4. The disclosure is objected to because of the following informalities: the brief description of the drawings fails to provide a description for Figure 1.

Appropriate correction is required.

*Claim Objections*

5. Claims 12 and 15 are objected to because of the following informalities:

Regarding claim 12, the applicant recites limitations directed to a registered trademark, specifically to "Teflon."

Regarding claim 15, the applicant recites limitations directed to first and second members. It appears that the terminology in the antecedent basis provided for those aspects of the invention in the specification uses upper and lower members.

Appropriate correction is required.

*Claim Rejections - 35 USC § 102*

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. Claims 1, 6-7, 10, 18, 19, 23, 25 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Porter (2,234,831).

Regarding claims 1, 18, 19, 25 and 36, Porter discloses a tamper with an elongated handle 9 with ball portion 7, a collar 11, a tamping base 1, and a housing member formed by the central cylindrical boss 5 (see Fig. 1). The housing member 5 comprises conventional threads that form V-shaped mating or clamping surfaces. Central body portion 4 receives ball portion 7 of the handle wherein the joint forms an articulated or pivotal connection.

Regarding claims 6 and 23, Porter discloses that the housing member formed by the central cylindrical boss 5 is disposed substantially in the center of the tamping base 1.

Regarding claim 7, Porter discloses that the tamping base 1 comprises a planar four-sided surface (see Fig. 2).

Regarding claim 10, Porter discloses that the collar 11 is disposed adjacent the threads or plurality of clamping surfaces.

8. Claims 1, 3, 4 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by McNamara (3,739,562).

Regarding claim 1, McNamara discloses a garden tool 10 that is a combination rake, hoe and tamping device wherein the tool consists of a handle attached to a tool by means of an angularly adjustable joint (see column 1, lines 1-15 and Figs. 1-5). The adjustable joint permits the locking of the tool surface at any desired angle to the handle to permit use of either the rake or hoe edges or to lock the tool surface at a right angle to the handle so that the device may be used as a tamping tool. The tool comprises an elongated handle 11 having a collar attached to the

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distal end of the handle, it is located between the handle 11 and the rotatable joint assembly 20 (see Fig.3). Please note that the definition of a collar has been given its broadest interpretation, wherein the collar definition has been taken from *Merriam-Webster's Collegiate Dictionary 10<sup>th</sup> edition: something resembling a collar in shape or use*. A flat tool member 15 functions as a tamping base having an upper and lower surface. The rotatable joint assembly 20 functions as a housing member that is disposed on the upper surface of the flat tool member 15. The rotatable joint assembly comprises a plurality of clamping surfaces 21,22 and a joint formed by screw 26 and female threads 23 that pivotally receives the elongated handle via the collar.

Regarding claim 3, McNamara discloses a garden tool 10 as described above wherein the handle 11 can pivot between any desired angle relative to the tool surface. As broadly claimed by the applicant, any particular angles may comprise an operational or a storage position.

Regarding claim 4, McNamara discloses a garden tool 10 as described above wherein the adjustable joint permits the locking of the tool surface at any desired angle to the handle to permit use of either the rake or hoe edges or to lock the tool surface at a right angle to the handle so that the device may be used as a tamping tool. This constitutes an operational position with the longitudinal axis oriented substantially perpendicular to the lower surface of the tamping base 15.

Regarding claim 6, McNamara discloses a garden tool 10 as described above wherein the rotatable joint assembly 20 that functions as a housing member is disposed substantially in the center of the flat tool member 15 (see Fig.2).

Regarding claim 7, McNamara discloses a garden tool 10 as described above wherein the flat tool member 15 comprises a planar four sided surface (see Fig.2).



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Regarding claim 8, McNamara discloses a garden tool 10 as described above wherein the joint comprises a bolt or screw 26 disposed through the housing member 20 at a distal end of the handle 11 (see Fig. 4).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 2, 5, 9, 10, 15, 16, 18-23, 25-29 and 31-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara (3,739,562) as applied to claim 3 above in view of Mazon (5,507,051).

McNamara discloses a garden tool 10 as described above wherein an angularly adjustable permits the locking of the tool surface at any desired angle to the handle to permit use of either the rake or hoe edges or to lock the tool surface at a right angle to the handle so that the device may be used as a tamping tool.

Regarding claims 20, 26 and 27, McNamara discloses a garden tool 10 as described above wherein the adjustable joint permits the locking of the tool surface at any desired angle to the handle to permit use of either the rake or hoe edges or to lock the tool surface at a right angle to the handle so that the device may be used as a tamping tool. This constitutes an operational

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position with the longitudinal axis oriented substantially perpendicular to the lower surface of the tamping base 15.

Regarding claim 21, McNamara discloses a garden tool 10 as described above wherein the rotatable joint assembly 20 that functions as a housing member is disposed substantially in the center of the flat tool member 15, which functions as a tamping base (see Fig.2).

However, McNamara fails to explicitly disclose that the tool may be locked at a storage position comprising the longitudinal axis of the handle oriented substantially parallel to the lower surface of the tamping base. McNamara also fails to disclose a collar that is threadably attached to the distal end of the elongated handle.

Regarding claims 2, 5, 18 and 19, Mazon discloses a prospector tool 10 comprising a shovel handle 12 and a collar or locking sleeve 22 that is adjustably coupled with locking threads 20. The prospector tool has a pivotable extending arm or housing member 34 that couples with a first end 14 of the shovel handle 12 and the locking sleeve 22 thereof. The pivotable extending arm 34 serves to position the shovel 26 at different angles. Fig.3 illustrates the shovel portion in the upper position or storage position wherein the longitudinal axis of the handle is oriented substantially parallel to lower surface of the shovel.

Regarding claims 9, 22, 28 and 38, Mazon discloses the prospector tool wherein the handle comprises an extension with a slot formed at a distal end (see Figs.4&5) for receiving a pivot bolt and for caming the handle against an inner wall of housing member 34.

Regarding claims 10, 23 and 29, Mazon discloses the prospector tool comprising a pivotable extending arm or housing member 34 that has a plurality of clamping surfaces wherein the collar or locking sleeve 22 is adjacent the clamping surface (see Figs.2&3).

Regarding claim 15, Mazon discloses the prospector tool wherein the handle comprises two-part construction (see Fig. 5). Mazon further discloses that the parts of the invention may include variations in material (see column 5, lines 37-45). Mazon further discloses that a portion of the handle may be made from a non-slip material for use in hot weather when a user's hands may become sweaty (see column 4, lines 5-10).

Regarding claim 16, Mazon discloses the prospector tool wherein the handle comprises two-part construction (see Fig. 5) and a first member of the handle is disposed adjacent housing member 34 and comprises a threaded portion 20 that adjustably couples to collar or locking sleeve 22.

Regarding claim 1, although McNamara fails to explicitly disclose that the tool may be locked at a storage position comprising the longitudinal axis of the handle oriented substantially parallel to the lower surface of the tamping base, it would be obvious to one of ordinary skill in the art to orient the handle parallel to the tamping surface because the device's joint is designed to accommodate that condition and such a condition would allow the device to be stored at a location using a little space as possible. Mazon teaches and illustrates this storage position in the position of the shovel portion 26.

Furthermore, regarding claim 5, 9, 10, 15 and 16, it would have been obvious to one of ordinary skill in the art to modify the rotatable joint assembly 20 of McNamara with the threadably attached collar taught by Mazon because it provides another means to adjustably lock the planar portion of the device relative to the handle. The tools are analogous art because they generally represent tools for removal or manipulation of earth and earthen structures. Moreover, they each provide a base that is angularly adjustable relative to a handle. Specifically, regarding

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claim 15, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide different materials for different parts of the device, as taught by Mazon, because different materials provide greater value to certain functions, such as non-slip material suggested by Mazon.

Regarding claims 31-35, although McNamara and Mazon fail to explicitly disclose a method of pivoting a handle on a tamper tool assembly, their disclosures provide the basic method steps required to develop a method such as the method claimed by the applicant of the present invention.

11. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara (3,739,562) as applied to claim 1 above in view of Bator (2,994,262).

McNamara discloses a garden tool 10 that is a combination rake, hoe and tamping device wherein the tool consists of a handle attached to a tool by means of an angularly adjustable joint (see column 1, lines 1-15 and Figs. 1-5).

However, McNamara fails to disclose a plurality of reinforcement members.

Bator discloses a silage packer 16 that functions as a tamping device wherein the packer comprises reinforcing ribs 24.

It would have been obvious to one of ordinary skill in the art to modify the garden tool of McNamara with the reinforcing ribs taught by Bator because the reinforcing ribs enhance the durability of the tool by stiffening it and strengthening it against the impact forces that it may sustain during use in the field.

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12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over McNamara in view of Mazon, as applied to claim 16, and further in view of Carmien (Re.32,364).

McNamara and Mazon disclose the inventions as described above. Specifically, Mazon discloses the prospector tool wherein the handle comprises two-part construction (see Fig.5). Mazon further discloses that the parts of the invention may include variations in material (see column 5, lines 37-45). Mazon further discloses that a portion of the handle may be made from a non-slip material for use in hot weather when a user's hands may become sweaty (see column 4, lines 5-10).

However, McNamara and Mazon fail to explicitly disclose that the portions of the shovel are made from metal and wood.

Carmien discloses a tool handle for tools such as a shovel or spade 10. Carmien discloses that such tools are comprised of various materials such as a metal, usually steel and wood (see column 1, lines 10-25).

It would have been obvious to one of ordinary skill in the art to incorporate the multiple material teaching of Carmien in the manufacture of the McNamara as modified by Mazon tool because, as Mazon suggests, such tool may be manufactured from various material to optimize the form and function of each part.

*Allowable Subject Matter*

13. Claims 11-13, 24 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hendrick (5,797,314), Hundley et al (3,759,624), Cooper (2,988,972) and Jarvis (5,115,536) disclose features that are pertinent to the present application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa M. Saldano whose telephone number is 703-605-1167. The examiner can normally be reached on Monday-Friday, 8:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on 703-308-2978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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